

Hraichie (Migration) [2023] AATA 2215 (12 July 2023)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Youssef Hraichie
VISA APPLICANT:	Mrs Houda Abbouch
REPRESENTATIVE:	Dr Mahmoud Ajjaw (MARN 9900118)
CASE NUMBER:	2214468
HOME AFFAIRS REFERENCE(S):	BCC2021/720035
MEMBER:	Peter Papadopoulos
DATE:	12 July 2023
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Visitor (Class FA) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 600 (Visitor) visa: • Public Interest Criterion 4020 for the purposes of cl 600.213(1) of Schedule 2 to the Regulations.

Statement made on 12 July 2023 at 5:02pm

CATCHWORDS

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – false or misleading information given in visa application – second child in Australia not listed – application completed online by review applicant – ‘relatives, friends or contacts’ section requires only one such person – no clear specification to list each and every possible person – second child clearly disclosed elsewhere – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5(1), 65
Migration Regulations 1994 (Cth), Schedule 2, cl 600.213(1), Schedule 4, criterion 4020(1), (5)

CASES

Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274
Trivedi v MIBP (2014) 220 FCR 169
Umer v MIBP [2017] FCCA 2934

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Visitor (Class FA) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicant applied for the visa on 14 December 2021.
6. On 23 August 2022, the delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 600.213(1) of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because the delegate was not satisfied that the applicant met Public Interest Criterion 4020 (PIC 4020).
7. The review applicant was represented in relation to the review by registered migration agent Dr Mahmoud Ajjawi (MARN 9900118).
8. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 600.213(1) for the grant of the visa.
10. **Relevant law**
11. Broadly speaking, PIC 4020 requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5-reviewable decision, a relevant assessing authority, or Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).
12. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) to mean information that is:
 - false or misleading at the time it is given; and

- relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.
13. The term 'bogus document' is defined in s 5(1) of the Act. In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
 14. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister, or the Tribunal on review, to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision.¹
 15. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B).
 16. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
 17. PIC 4020 in Schedule 4 to the Migration Regulations 1994 and the definition of bogus document in section 5 of the Act are set out in the Attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

18. On 14 April 2022, the delegate wrote to the applicant raising the following concern in support of the contention that the applicant had provided false or misleading information as part of her visa application:

The Departmental records show that you have another child in Australia whom you have not declared in your application form and who has a pending citizenship application with the Department. Exclusion of such information raises concerns that you provide misleading information on purpose to avoid any adverse impact on your pending visa application.

19. By way of response, the delegate received a letter from the review applicant which read, in part, as follows:

My Name is Youssef Hraichie I am Houda ABBOUCH (the applicant) son.

I filled the application on my mum's behalf. I truly apologize for the mistake I done during filling the application by not inclosing my Brother Omar Hraichie in the application, I can assure you it was unintentional mistake.

Under no circumstances I was trying to provide bogus information or misleading you. I am not experienced in filling these kinds of applications.

Me and My brother Omar we live in Australia, and we haven't seen our mum for many years. I also have a sister that lives with mum and she's staying in turkey.

I provided you with Family certificate I thought that was sufficient.

¹*Trivedi v MIBP* (2014) 220 FCR 169 at [33]

Here my Brother detail: Name : Omar Hraichie DOB:18/08/1994 PASSPORT NUMBER : RL 3704262 Condition permanent Visa Holder

20. I am happy to provide any information that you request. please accept my apologies again

21. Having considered the applicant's response, the delegate found that the applicant failed to satisfy PIC 4020(1) because she 'provided evidence to the Department that was considered to be of a 'non-genuine' nature'. This information was described by the delegate in the decision as follows:

22. From the application form, in Contact in Australia section, the applicant claimed their son Youssef Hraichie as a contact. However, the Departmental records show that the applicant has another contact in Australia which was not mentioned in the application form.

23. For the purposes of its assessment, the Tribunal has carefully considered the applicant's online visa application form "Record of Responses" in order to understand the scope of information sought by the Department in connection with the visa application. It must be understood that this visa application was lodged via the Department's online portal which guides applicants through the form to enable its proper completion.

24. In a section of the online application form entitled 'Relatives, friends or contacts in Australia', the applicant answered 'Yes' to the following question:

25. Will the applicant visit any relatives, friends or contacts while in Australia?

26. The applicant was then prompted to enter further information in the online visa application form. There was no guidance or advice provided to the applicant to then provide details of each and every relative, friend and contact in Australia in this part of the form. The form permitted the applicant to proceed to the next step simply by providing the details of one relative, friend or contact in Australia. While the form allowed for the provision of information for multiple individuals, there was no clear guidance or specification for the applicant to provide such information for each and every individual who might conceivably fall into the category of 'relatives, friends and contacts' to be visited by the applicant while in Australia. On that basis, as specified in the section of the online application form entitled 'Contact in Australia', the applicant provided details about one such individual, her son Youssef. In doing so, she provided extensive personal information about Youssef including his name, address, date of birth, contact telephone numbers, email address and residency status.

27. Given the limited nature of guidance to applicants when completing this part of the online visa application form, the Tribunal sees no lawful basis upon which the delegate could construe the applicant's responses in a manner such that she had given, or caused to be given, false or misleading information as part of her visa application. In the Tribunal's view, the applicant responded to the questions in the online visa application form such that her responses did not convey or contain a misrepresentation. Put simply, the applicant did not provide an incorrect answer to this particular question in the online visa application form. Therefore, any 'failure' to provide information about her son Omar in this part of the online visa application form is not, in the Tribunal's view, an omission which was misleading for the purposes of PIC 4020(5).²

28. The Tribunal also observes that, in support of the visa application, the applicant provided other evidence to the Department which clearly disclosed her relationship with her two sons, Youssef and Omar, who were resident in Australia. This action serves as further indication

²*Umer v MIBP* [2017] FCCA 2934 at [46]-[47]

that there was no element of fraud or deception involved in this case such that PIC 4020 would be enlivened.

29. On this basis, the applicant has not given, or caused to be given, information that is false or misleading in a material particular in relation to the visa application.
30. There is also no evidence before the Tribunal indicating that the applicant has given, or caused to be given, information that is false or misleading in a material particular in relation to a visa that she held in the period 12 months before she made her visa application.
31. Finally, there is also no evidence before the Tribunal indicating that the applicant has given, or caused to be given, a bogus document in relation to the visa application or a visa that she held in the period of 12 months before the application was made.
32. Therefore, the Tribunal is satisfied that PIC 4020(1) has been met.

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

33. PIC 4020(2) requires the Tribunal to be satisfied that the applicant and each member of the family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).
34. Departmental records show the applicant has not been refused a visa on the grounds of PIC 4020(1) during the three years prior to her application having been made.
35. Therefore, the Tribunal is satisfied that PIC 4020(2) has been met.

Has the applicant satisfied the identity requirements?

36. PIC 4020(2A) requires an applicant satisfy the Tribunal as to his or her identity. The Tribunal is satisfied that the applicant has provided genuine documents in relation to her identity.
37. Therefore, the Tribunal is satisfied that PIC 4020(2A) has been met.

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

38. PIC 4020(2B) requires that neither the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).
39. There is no evidence before the Tribunal indicating that that the applicant has ever been refused a visa in the relevant period due to a failure to satisfy PIC 4020(2B).
40. Therefore, the Tribunal is satisfied that PIC 4020(2B) has been met.

41. Conclusion

42. Given the analysis, findings and reasons above, the applicant satisfies PIC 4020 for the purposes of cl 600.213(1).

DECISION

43. The Tribunal remits the application for a Visitor (Class FA) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 600 (Visitor) visa:
- Public Interest Criterion 4020 for the purposes of cl 600.213(1) of Schedule 2 to the Regulations.

44.

Peter Papadopoulos
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

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